

Message Text

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ACTION L-03

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FM AMEMBASSY MANILA

TO SECSTATE WASHDC 3670

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E. O. 11652: N/ A

TAGS: PFOR, RP

SUBJECT: EXTRADITION TREATY NEGOTIATIONS

REF: STATE 038032

BEGIN SUMMARY: PRELIMINARY WORKING GROUP ON EXTRADITION
SCHEDULED FOR FIRST MEETING ON 13 MARCH. DISCUSSION OF
DUE PROCESS UNDER THE MILITARY TRIBUNALS CREATED BY MARTIAL
LAW. LEGAL MATERIAL REQUESTED POUCHED. END SUMMARY

1. DEPT. OF JUSTICE HAS VERBALLY NOTIFIED EMBASSY THAT
THE PHIL PANEL TO THE EXTRADITION WORKING GOUP IS PREPARED
TO HAVE FIRST MEETING ON TUESDAY, 13 MARCH, AT THE DFA.
EMBASSY HAS CONCURRED AND DEPT. OF JUSTICE OFFICIAL HAS
STATED THAT FORMAL NOTIFICATION OF DATE, TIME, AND PLACE
OF MEETING WILL BE MADE BY DFA.

2. REFERENCE INQUIRY IN PARA 1 REFTEL. UNDER THE MARTIAL
LAW DECLARATION, THE CIVILIAN COURTS CONTINUE TO OPERATE,
AND MOST CRIMINAL CASES ARE STILL TRIED IN THAT FORUM. HOWEVER
UNDER GENERAL ORDER 12 (SEE MANILA 9 336, 1972 SERIES),
MILITARY TRIBUNALS HAVE BEEN GIVEN EXCLUSIVE JURISDICTION
OVER SOME OFFENSES AND CONCURRENT JURISDICTION WITH CIVILIAN
COURTS IN OTHER OFFENSES. IN RELATION TO THE COMMON LAW
FELONY OFFENSES (MURDER, RAPE, ROBBERY, ETC.) THE CIVILIAN
COURTS CONTINUE TO HAVE EXCLUSIVE JURISDICTION OVER
CIVILIANS. IN OFFENSES LIKE BRIBERY, GRAFT, CORRUPTION OF
PUBLIC OFFICIALS, REBELLION, SEDITION, FIREARM VIOLATIONS,
USURPATION OF AUTHORITY AND VIOLATION OF MARTIAL LAW ORDERS
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AND DECREES, MILITARY TRIBUNALS HAV EXCLUSIVE JURISDICTION. IN OFFENSES UNDER THE DANGEROUS DRUG ACT, AND VIOLATION OF REVENUE, TARIFF AND CUSTOMS LAW, THE JURISDICTION IS CONCURRENT IF ACCUSED IS A CIVILIAN. THE ABOVE IS NOT AN EXHAUSTIVE LIST OF THE OFFENSES IN EACH CATEGORY.

4. IF ACCUSED IS TRIED BY CIVILIAN COURTS, HE WOULD RECEIVE ALL ESSENTIAL ASPECTS OF DUE PROCESS INCLUDING REPRESENTATION BY COUNSEL OF HIS CHOICE, RIGHTS AGAINST SELF- INCRIMINATION AND FULL APPELLATE PROCEDURE. PHILIPPINES IS A CIVIL LAW COUNTRY AND THEREFORE THERE ARE NO JURY TRIALS.

5. IF ACCUSED IS TRIED BY MILITARY TRIBUNALS, THE QUESTION OF DUE PROCESS IS NOT SO READILY ANSWERED. THE MILITARY TRIBUNAL IS COMPOSED OF FIVE SENIOR RANKING MILITARY OFFICERS, WHICH INCLUDES A QUALIFIED LEGAL ADVISER. JUDGE ADVOCATE IS APPOINTED AS DEFENSE COUNSEL AND ANOTHER AS TRIAL COUNSEL (SEE MANILA 9574, 1972 SERIES). THE ACCUSED MAY ALSO EMPLOY COUNSEL OF HIS CHOICE. IN THEORY, ALL BASIC RIGHTS ARE AFFORDED THE ACCUSED DURING TRIAL. HOWEVER THE ONLY AVENUE OF APPEAL IS TO THE PRESIDENT THROUGH THE CHIEF OF STAFF, AFP, AND THE SECRETARY OF NATIONAL DEFENSE. THE PRESIDENT HAS THE POWER TO REVERSE, CONFORM, OR INCREASE THE PENALTY IMPOSED. HE ALSO HAS THE RIGHT TO REVIEW THE PROCEEDINGS ON HIS OWN. HE RECENTLY USED THIS PREROGATIVE IN REGARD TO A DRUG (HEROIN) MANUFACTURER WHO HAD BEEN GIVEN LIFE IMPRISONMENT BY THE TRIBUNAL. HE INCREASED THE PENALTY TO DEATH BY A FIRING SQUAD WHICH WAS, IN FACT, CARRIED OUT. IF APPELLATE RIGHTS ARE CONSIDERED ESSENTIAL FOR DUE PROCESS, IT WOULD APPEAR THAT SUCH IS LACKING IN TRIALS BEFORE MILITARY TRIBUNALS. IF APPELLATE RIGHTS ARE NOT DEEMED TO BE NECESSARY FOR DUE PROCESS, IT WOULD APPEAR THAT THE PROCEDURE USED IN THE MILITARY TRIBUNALS WOULD SATISFY THE MINIMUM REQUIREMENTS OF DUE PROCESS.

6. WHILE A LARGE NUMBER OF OFFENSES THAT ARE LISTED IN THE TYPICAL EXTRADITION TREATY WOULD BE TRIED ONLY BE CIVILIAN COURTS, A SIGNIFICANT NUMBER OF EXTRADITABLE OFFENSES WOULD BE WITHIN EITHER THE EXCLUSIVE OR CONCURRENT MARTIAL LAW CONDITION IN THE PHILIPPINES. FURTHER EVALUATION OF THIS ASPECT WILL BE ACCOMPLISHED DURING THE LIMITED OFFICIAL USE

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PRELIMINARY WORKING GROUP MEETINGS.

7. MATERIAL REQUESTED IN PARA 2 REFTEL HAS BEEN POUCHED
TO L/ M/ SCA.
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*** Current Classification *** LIMITED OFFICIAL USE

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